

1981 December 16

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEDA GEORGHIADOU DEKATRI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 419/81).

Provisional Order—Rule 13 of the Supreme Constitutional Court Rules, 1962—Discretion of the Court—Principles applicable.

Educational Officers—Transfers—Educational needs—Verification of, under regulation 14(1) of the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Connected Subjects) Regulations of 1972—Refers to the needs of the Schools in general as regards the number of the teaching personnel required for a particular lesson—And not to the person, who is going to fill a post, a matter which is left with the respondent Committee—Section 39(1) of the Public Educational Service Law, 1969 (Law 10/69)—Regulation 16(3) of the above Regulations—It concerns Officers applying for transfer but does not apply to transfers decided by the Committee for educational needs—Proviso to regulation 16(3).

The applicant, a teacher of French in Secondary education, was on June 26, 1981 transferred from the 5th Gymnasium Limassol to the 2nd Gymnasium of Phaneromeni and the Technical School in Nicosia with effect from the 1st September, 1981. On October 12, 1981 she was transferred, in addition to the said two Schools, to the Makarios III Gymnasium, Nicosia; and on October 14, 1981 she was transferred by the respondent Committee from Nicosia to the 4th Gymnasium Limassol with effect from the 15th October, 1981. As against

5 this last transfer applicant filed a recourse and, at the same time, she filed an application under rule 13 of the Supreme Constitutional Court Rules, 1962, for a provisional order suspending the effect of the sub judice transfer pending the final determination of the recourse.

Counsel for the applicant contended:

10 (a) That the decision complained of was flagrantly illegal because there was no verification of the educational needs by the appropriate authority in accordance with regulation 14(1)* of the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Connected Subjects) Regulations of 1972.

15 (b) That the decision complained of was flagrantly illegal because it was contrary to regulation 16(3)** of the above Regulations, which provides that Educational Officers are subject to further transfer after having served "for some time" and that these words must be taken to mean at least for a period of one School year.

20 *On the application for a provisional order:*

25 *Held, (after stating the principles governing the grant of a provisional order—vide p. 11 post) that under regulation 14(1) the appropriate authority makes submissions as to the needs of the Schools in general with regard to the number of the teaching personnel required for every lesson, their specialities and the like; that the person who is going to fill the post and any further transfers to meet the situation created by the original transfers is entirely left with the respondent Committee as provided by section 39(1) of Law 10/69; that in the present case*

30 *no verification was required from the appropriate authority for the respondent Committee to make this particular transfer; that as regards regulation 16(3) this concerns educational officers who apply for transfer but does not apply as regards the transfers decided by the respondent Committee for educational needs (see the provisos to regulation 16(3)); that, therefore, the sub*

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* Regulation 14(1) is quoted at p. 12 *post*.

** Regulation 16(3) is quoted at pp. 12–13 *post*.

judice decision was not flagrantly illegal; accordingly the application for a provisional order should fail.

Application dismissed.

Cases referred to:

- Aspri v. The Republic*, 4 R.S.C.C. 57; 5
Procopiou and Others v. The Republic (1979) 3 C.L.R. 686;
Sofocleous v. The Republic (1981) 3 C.L.R. 360.

Application for a provisional order.

Application for a provisional order suspending the effect of the decision of the respondent by virtue of which the applicant was transferred from Phaneromeni 2nd Gymnasium, 1st Technical School and the Gymnasium Makarios III in Nicosia to the 4th Gymnasium of Limassol pending the final determination of the recourse against the validity of such decision. 10

A.S. Angelides, for the applicant. 15

E. Papadopoulou (Mrs.), for the respondent.

Cur. adv. vult.

MALACHTOS, J. read the following judgment. The applicant in this recourse, a teacher of French, in secondary education, filed on the 11th November, 1981, the present recourse claiming, as stated therein, a declaration and/or decision of the court that the decision and/or act of the respondents, which was communicated to the applicant orally on the 14th October, 1981, by virtue of which they transferred the applicant as from 15.10.1981 from the Phaneromeni 2nd Gymnasium, the 1st Technical School and the Gymnasium Makarios III in Nicosia to the 4th Gymnasium of Limassol, is void and illegal and of no legal effect whatsoever. 20 25

At the same time, she filed an application under rule 13 of the Supreme Constitutional Court Rules 1962, for a provisional order suspending the effect of the said decision pending the final determination of the recourse against the validity of such decision. 30

The relevant facts as regards the application for the issue of a provisional order, with which we are concerned, shortly put are the following: 35

The applicant was first appointed on contract as a teacher

of French in secondary education in 1970. In 1980 she was appointed on probation and was posted at the 5th Gymnasium in Limassol. By a decision of the respondent committee dated 26.6.1981 the applicant was transferred as from 1.9.1981 from
5 the 5th Gymnasium of Limassol to the 2nd Gymnasium of Phaneromeni and the Technical School in Nicosia.

On the 12th October, 1981 the appropriate authority by virtue of section 39(2) of the Educational Service Law of 1969 (10/69), transferred the applicant for educational reasons in
10 addition to the 2nd Gymnasium Phaneromeni and the Technical School, to the Makarios III Gymnasium, Nicosia.

On 14.10.1981 the respondent committee issued the decision complained of transferring the applicant from Nicosia as from 15.10.1981 back to Limassol and posted her at the 4th Gymna-
15 sium.

The principles on which a provisional order may be issued have been expounded and applied in a series of cases starting from the case of *Aspri v. The Republic*, 4 R.S.C.C. 57 up to the case of *Procopiou and Others v. The Republic* (1979) 3 C.L.R. 686 and the recent case of *Agni Sofocleous v. The Republic*
20 (1981) 3 C.L.R. 360, and are the following:

“The making of a provisional order under rule 13 involves the exercise of judicial discretion on the basis of the circum-
stances of the particular case and in the light of the principles
25 which should guide an administrative court when dealing with such application”.

It is clear from the said principles that an applicant in order to succeed in an application for a provisional order under rule 13 of the Supreme Constitutional Court Rules, 1962, must
30 show to the court that his application is likely to prevail on the merits and that the non making of the order will cause him irreparable damage. It goes without saying that flagrant illegality of an administrative act militates strongly to the making of a provisional order even though irreparable damage has not
35 been proved.

Counsel for applicant at the outset of his address in support of his case made it clear that he would confine himself on one point only, that is, that the decision of the respondent committee

complained of is flagrantly illegal as taken contrary to the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Connected Subjects) Regulations of 1972 and, particularly, regulations 14(1) and 16(3). These regulations read as follows:

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“14.(1) ΑΙ τοποθετήσεις και μεταθέσεις εκπαιδευτικών λειτουργιών διενεργούνται υπό του αρμοδίου οργάνου βάσει των εκπαιδευτικών αναγκών ως αυτά βεβαιούνται υπό της αρμοδίας αρχής, ει τῷ πλαισίῳ δὲ τούτων λαμβάνονται κατὰ τὸ δυνατόν ὑπ’ ὄψιν και αἱ προτιμήσεις τῶν εκπαιδευτικών λειτουργιών.

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(2) Οἱ εκπαιδευτικοὶ λειτουργοὶ ὑποχρεοῦνται νὰ ὑπηρετῶσιν ὅπου τοποθετοῦνται ἢ μετατίθενται.

(3) Εἰς εκπαιδευτικὸν λειτουργὸν δύναται νὰ ἀνατεθῇ ὑπηρεσία εἰς πλείονα τοῦ ἐνὸς σχολεῖα βάσει τῶν εκπαιδευτικῶν αναγκῶν οὐχὶ ὁμως εἰς πλείονα τῶν δύο τόπων.

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16. (1) Οἱ εκπαιδευτικοὶ λειτουργοὶ μετατίθενται—

(α) βάσει τῶν εκπαιδευτικῶν αναγκῶν·

(β) τῇ αἰτήσῃ αὐτῶν διὰ σοβαροῦς προσωπικοῦς ἢ οικογενειακοῦ, λόγους νοουμένου ὅτι ἐξυπηρετεῖται καὶ τὸ συμφέρον τῆς ὑπηρεσίας.

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(2) Οἱ εκπαιδευτικοὶ λειτουργοὶ, οἵτινες ὑπηρετοῦσι κατὰ τὴν διάρκειαν τῆς περιόδου δοκιμασίας εἰς σχολεῖα ὡς ἐν τῷ Κανονισμῷ 15 ἀναφέρεται, ὑπόκεινται εἰς μετάθεσιν μετὰ τὴν ἐπικύρωσιν τοῦ διορισμοῦ των ἢ ἐπικειμένης ταύτης—

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(α) προκειμένου περὶ καθηγητῶν, εἰς σχολεῖα ἀγροτικῶν περιοχῶν καὶ εἰ δυνατόν, εἰς τὴν αὐτὴν περιφέρειαν ἢ εἰς ἄλλην δι’ ἣν ἔχουσιν ἐκφράσει προτίμησιν.

(β) προκειμένου περὶ διδασκάλων, εἰς σχολεῖα Γ ἢ, μὴ ὑπαρχουσῶν εἰς αὐτὰ ἐπαρκῶν κενῶν θέσεων, εἰς σχολεῖα Β τῶν τριῶν διδασκάλων.

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(3) Οἱ κατὰ τὰ ἀνωτέρω μετατιθέμενοι εκπαιδευτικοὶ λειτουργοὶ ὑπόκεινται εἰς περαιτέρω μετάθεσιν, κατόπιν ὑπηρεσίας ἐπὶ χρονικὸν τι διάστημα καὶ ὡς ἤθελον παρουσιασθῆ δυνατότητες διὰ μετάθεσιν, ὡς ἀκολούθως:

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(α) Οἱ καθηγηταὶ μετατίθενται εἰς ἀστικά κέντρα·

(β) Οἱ διδάσκαλοι μετατίθενται εἰς μεγαλύτερα σχολεῖα Β καὶ ἀκολουθῶς, κατόπιν ὑπηρεσίας εἰς τοιαῦτα σχολεῖα καὶ ἀναλόγως τῶν παρουσιαζομένων δυνατοτήτων, μετατίθενται εἰς σχολεῖα Α:

5 Νοεῖται ὅτι εἰς ἀμφοτέρας τὰς ὡς ἄνω περιπτώσεις—

(i) ἡ μετᾶθesis εἶναι εἰς εὐμενεστέραν διὰ τὸν ἐκπαιδευτικὸν λειτουργὸν θέσιν ἔκτος εἰς περιπτώσεις μεταθέσεως λόγω ἐκπαιδευτικῶν ἀναγκῶν ἢ πειθαρχικῆς μεταθέσεως·

10 (ii) ἐκπαιδευτικὸς λειτουργὸς δὲν μετατίθεται ἄνευ αἰτήσεως αὐτοῦ πλὴν ἐὰν συντρέχωσιν ἐκπαιδευτικοὶ λόγοι ἢ ἐὰν ἡ περαιτέρω παραμονὴ του εἰς τὸ αὐτὸ σχολεῖον συγκρούηται πρὸς δικαιολογημένον αἴτημα ἄλλου ἐκπαιδευτικοῦ λειτουργοῦ πρὸς μετᾶθesis”.

15 (“14.(1) Postings and transfers of educational officers are made by the appropriate organ on the basis of the educational needs as verified by the appropriate authority, and in this respect the preferences of the educational officers are, as far as possible, taken into consideration.

20 (2) Educational officers are bound to serve at the place where they are posted or transferred.

(3) To an educational officer service may be assigned to more than one school according to the educational needs but in not more than two places..

16.—(1) Educational officers are transferred—

25 (a) in accordance with the educational needs;

(b) on their own application for serious personal or family reasons, provided that the interest of the service is also served.

30 (2) Educational officers, who are serving during the probationary period in the schools referred to in regulation 15, are subject to transfer after the confirmation of their appointments or when such confirmation is about to take place—

35 (a) in cases of schoolmasters, to schools in rural areas, and, if possible, of the same region or of another for which they have expressed preference;

(b) in cases of school-teachers, to C schools, or, if there are not there adequate vacant posts, to B schools with three teachers.

(3) The educational officers transferred as above are subject to further transfer, after having served for some time and as possibilities for transfer may occur, as follows:

(a) Schoolmasters are transferred to urban centres;

(b) School-teachers are transferred to larger B schools and subsequently, after serving at such schools, and depending on possibilities that may arise, are transferred to A schools:

Provided that in both the above instances—

(i) the transfer is to a more favourable for the educational officer post, except in cases of transfer for educational needs or disciplinary transfers;

(ii) an educational officer is not transferred without an application on his part except if there exist educational reasons or if his further stay at the same school conflicts with a justified request of another educational officer for transfer”).

Counsel for applicant submitted that in the present case not only there was no verification in accordance with regulation 14(1) by the appropriate authority, which according to the interpretation section of Law 10/69 is the Minister of Education acting usually through the Director-General of the Ministry, for the transfer of the applicant from Nicosia to Limassol for educational needs, but, on the contrary, there was verification that on the 12th October, 1981 the services of the applicant were required in Nicosia and, therefore, the decision complained of taken by the respondent committee was flagrantly illegal. It is clear from the documentary evidence adduced, *exhibit 2*, dated 10/12/1981, signed by the Head of the Technical Education and the Head of the Higher and Secondary Education, that the applicant was posted at the 2nd Gymnasium Phaneromenis, the Technical School and the Makarios III Gymnasium in Nicosia.

Counsel for applicant further submitted that the decision complained of was also contrary to the provisions of regulation

16(3) as the service of the applicant in Nicosia after her transfer from Limassol was so short, in fact, she served in Nicosia for about a month. The words "for some time" "epi chronikon ti diastima" must be taken to mean at least for a period of one school year.

I have carefully considered the submissions of counsel for applicant and I must say that I entirely disagree with the interpretation given by him to both regulation 14(1) and 16(3). To my mind under regulation 14(1) the appropriate authority makes submissions as to the needs of the schools in general as regards the number of the teaching personnel required for every lesson, their specialities and the like. The person who is going to fill the post and any further transfers to meet the situation created by the original transfers is entirely left with the respondent committee as provided by section 39(1) of the Law.

In the present case no verification was required from the appropriate authority for the respondent committee to make this particular transfer.

As regards regulation 16(3), this concerns the educational officers who apply for transfer but does not apply as regards the transfers decided by the respondent committee for educational needs. This is clear from the provisos to regulation 16(3).

For the above reasons the application for the issue of a provisional order is hereby dismissed.

On the question of costs I make no Order.

The case is fixed for directions on 29th December, 1981 at 9.30 a.m.

Application dismissed. No order as to costs.